

From: [Sandra Ka Hon Chu](#)
To: [Board of Health](#); [Cecile Kazatchkine](#)
Subject: [External Sender] RE: Board of Health meeting December 9th
Date: December 6, 2024 5:04:38 PM
Attachments: [image001.png](#)
[image002.png](#)
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To the Toronto Board of Health:

The HIV Legal Network has prepared the attached written submission, to complement our deputation on Monday the 9th.

We would be most grateful if you could confirm receipt.

Thank you,
Sandra

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HIV LEGAL NETWORK SUBMISSION TO TORONTO BOARD OF HEALTH

December 9, 2024

On November 18, 2024, the Ontario government tabled [Bill 223, Safer Streets, Stronger Communities Act, 2024](#). Of relevance to the Toronto Board of Health is Schedule 4 of the legislation, titled *Community Care and Recovery Act, 2024* (the “Act”). This Act will have colossal ramifications for Toronto’s ability to respond to toxic drug emergencies in this city, binding it from engaging in evidence-informed, life-saving measures responsive to local needs.

a. Supervised consumption services

Section 2(1) of the Act states that “no person shall establish or operate a supervised consumption site at a location that is less than 200 metres, measured in accordance with subsection (2), from a designated premises.” “Designated premises” are defined in Section 1 of the Bill to include schools (including private schools), childcare centres, EarlyON centres, and a “prescribed premise” which is not defined. A “prescribed premises” (which does not need to be limited to premises for children) can be defined by subsequent regulations.

This means no one — whether it is a municipality or community organization — can operate supervised consumption services (SCS) within 200 metres of a designated premises. This includes provincially funded Consumption and Treatment Services (CTS), but also other sanctioned SCS¹ funded by municipalities as well as temporary Urgent Public Health Needs Sites (UPHNS).

In Toronto alone, this would affect at least five SCS including the Works run by Toronto Public Health, as well as municipally supported UPHNS often embedded in shelters services. No alternative will be provided to clients that rely on these services to survive and thrive. SCS providers will be left without space and structure to respond to overdose related emergencies.

The 200-meter rule was unilaterally decided by the province without consulting with populations that will be disproportionately impacted by the legislation, including Indigenous people who use drugs, or the municipalities that must bear the devastating consequences of these arbitrarily-established SCS prohibitions. The legislative process was also rushed and fundamental steps of the legislative process, such as Committee review, were bypassed.

The automatic closure of most CTS and UPHNS because of the 200-meter rule will have devastating consequences for the city but Toronto will also be further impeded by provisions of the Act that prevent locally adapted responses to the toxic drug crisis.

Section 3(2) of the Act indicates that “a municipality or local board does not have the power, without the approval of the (provincial) Minister (of Health), to ... Apply to Health Canada for an exemption or a renewal of an exemption to the *Controlled Drugs and Substances Act* (Canada) for the purpose of operating a supervised consumption site” or even to “Support, including by passing a by-law or making

¹ The Act defines “supervised consumption services” as a site that is operating under a federal exemption under section 56(1) or 56.1 of the *Controlled Drugs and Substance Act*.



a resolution, an application made to Health Canada by any other person in respect of any matter described in paragraph 1 or 2.”²

This means that municipal authorities, including local boards of health, are not permitted to:

- Request a federal exemption, or renew their exemption, to operate a SCS, without provincial approval; or
- Support a person to request a federal exemption or renew their exemption, to operate an SCS, without provincial approval.

Because federal exemptions are necessary for a SCS to operate without risk of prosecution,³ the Act will prevent municipalities and boards of health from operating new SCS or renewing their exemption, including for temporary urgent services (UPHNS).

Further, by preventing municipalities from supporting a person to request a federal exemption or renew their exemption, including through funding,⁴ the government is barring municipalities from supporting SCS that are denied provincial funding.

The Act does not outline conditions for the provincial approval of an application for a federal exemption by a municipality or local board, leaving it to the sole discretion of the provincial ministry of health. The Ministry of Health has also indicated “there will be no further approvals of consumption sites in the province of Ontario under (their) government.”⁵

This constraint on municipal power to provide the support they know their residents need is unjustifiable. The Act will lead to preventable deaths and impose extreme pressure on emergency services. It will also increase public drug use.

At a time where Toronto faces a relentless drug toxicity epidemic that has already taken the lives of so many Torontonians, these unjustified constraints on the establishment of lifesaving SCS cannot be unchallenged

b. Other limitations on municipal powers

Section 3(1) of the Act states that “(s)ubject to such exceptions as may be prescribed, despite sections 7 and 8 of the *City of Toronto Act, 2006* and sections 9, 10 and 11 of the *Municipal Act, 2001*, a municipality or local board does not have the power to apply to Health Canada for an exemption under subsection 56 (1) of the *Controlled Drugs and Substances Act (Canada)* from any provision of that Act

² As per Section 1 of the Municipal Affairs Act R.S.O. 1990, CHAPTER M.46, a “local board” means “a school board, municipal service board, transportation commission, public library board, **board of health**, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power or authority under any general or special Act with respect to any of the affairs or purposes, including school purposes, of a municipality or of two or more municipalities or parts thereof.” [emphasis added]

³ Because the *Controlled Drugs and Substances Act (CDSA)* prohibits the possession of certain drugs for personal use as well as handling, distributing, splitting, or sharing those drugs (which may amount to “trafficking”), staff and clients of supervised consumption and drug-checking services need an *exemption* from the CDSA issued by the federal government to operate without risk of criminal prosecution.

⁴ As described by the Minister of Health Sylvia Jones, “The proposed legislation also requires municipalities and local boards such as public health units to obtain provincial approval before making or supporting a request for a new drug consumption site, *providing funding for a new site (...).*”

⁵ Ministry of Health, Sylvia Jones, at a press conference on November 18, 2024, at Queen’s Park Toronto, Ontario.



for the purpose of decriminalizing the personal possession of a controlled substance or precursor.” [emphasis added]

This provision is meant to prohibit any local initiative to decriminalize personal drug possession in Ontario — an initiative that Toronto itself took in 2022 by seeking a federal exemption under the *Controlled Drugs and Substances Act*, in an application that was supported by the HIV Legal Network, other drug policy and harm reduction advocates, public health experts, and the Toronto Police Service.

Given that the criminal law is within the exclusive jurisdiction of the federal government, it remains unclear whether the province has the legal authority to prohibit municipalities from applying for a federal exemption to decriminalize personal drug possession.

Further, section 3(2) of the Act indicates that “a municipality or local board does not have the power, without the approval of the Minister, to ... **Apply to Health Canada for funding under Health Canada’s Substance Use and Addictions Program or any other Health Canada program in respect of safer supply services**, or enter into an agreement with the Government of Canada with respect to funding under such a program in respect of safer supply services” or even to support, “including by passing a by-law or making a resolution” a safe supply application to Health Canada. [emphasis added].

Effectively, this provision means that only non-governmental bodies in Toronto (and Ontario) will be able to seek federal funding for safe supply programs. Again, the legal authority for the provincial government to intervene in the health funding decisions of municipalities is unclear and could set a worrisome precedent if it remains unchallenged.

Recommendations

The Ontario government decided to introduce Bill 223 knowing, from their own experts, that there is high risk it will increase emergency department visits, overdose, overdose deaths, and other negative health impacts, as well as public use, and disproportionately harm Indigenous, Black, and low-income people in Ontario.⁶ Ample studies, including internal government reports and independent evaluations, consistently demonstrate a range of public health and public safety benefits of SCS. According to a recent report on SCS in Ontario, “Ontario’s supervised consumption services have recorded 1.12 million visits from 178,000 unique clients” since March 2020 and “have facilitated more than 530,000 service referrals — including housing, case management, and substance use treatment — and successfully reversed 22,000 overdoses.”⁷ SCS also reduce public drug use and discarded drug use equipment. Contrary to the Ontario government’s claims that crime has increased in neighbourhoods with SCS relative to other neighbourhoods, data show *decreases* in rates of homicide, assault, and robbery in the vicinity of an SCS after opening.⁸ Moreover, a recent report from the Office of the Auditor General of Ontario found that the decision to close SCS was made “without proper planning, impact analysis or public consultations”⁹ and is not based on evidence.¹⁰

In 2011, the Supreme Court of Canada unanimously ordered the federal Minister of Health to grant Insite, the first legally sanctioned SCS in Canada, an exemption to continue operating. The court found

⁶ Colin D’Mello and Isaac Callan, “Hospitalizations and death: Ontario’s internal warnings over supervised consumption site ban,” *Global News*, November 14, 2024.

⁷ Centre on Drug Policy Evaluation, *Supervised Consumption Services in Toronto: Evidence and Recommendations*, November 2024.

⁸ *Ibid.*

⁹ Office of the Auditor General of Ontario, *Performance audit: Implementation and Oversight of Ontario’s Opioid Strategy*, December 2024.

¹⁰ *Ibid.*



that Insite saves lives and ruled that denying an exemption would violate the *Charter* rights to life, liberty and security of the person in a way that would be both “arbitrary” and “grossly disproportionate.”¹¹

According to media reporting, the Ontario government has been warned by their own lawyers that municipalities “may be critical of the province limiting their autonomy in addressing the opioid crisis” and that the prohibition of SCS within 200 metres of a school or childcare centre creates a “high risk” of infringing the *Charter*. Specifically, the advice laid out that section 7 of the *Charter* (“life, liberty, security of the person of site users”) could be contravened. In order to win a *Charter* challenge, they indicated that the government would have to demonstrate that the operation of a SCS is “always unsafe or harmful, even when operated under reasonable conditions,” which is not supported by evidence.¹² Given the predictable disproportionate impact on people who use drugs, especially Indigenous, Black, and low-income people, it could also be argued that the bill violates section 15 of the *Charter* that protects individuals against discrimination.

Not only does the Act breach the *Charter* rights of Toronto residents, and particularly those most marginalized in this city, the implications of the Act on Toronto’s ability to effectively respond to toxic drug deaths in the city are enormous. People who use drugs, frontline staff of harm reduction and health agencies, public health scholars, and human rights advocates have universally denounced this legislation. Today, we collectively ask the city to step in and refuse unjustifiable and deadly constraints on its power to provide support to Toronto residents.

In light of this, we urge the Board of Health to:

- 1. Instruct the Board Chair and the Medical Officer of Health to engage the city solicitor about legal responses to challenge the *Community Care and Recovery Act* and report back to the Board by December 18th.**
- 2. Instruct the Medical Officer of Health to immediately advise city council including the mayor about the health implications of the *Community Care and Recovery Act* for Toronto and Toronto Public Health.**
- 3. Instruct the Board Chair to put a motion before City Council at the next Council meeting to legally challenge the *Community Care and Recovery Act*, which encroaches on the jurisdiction of the City to protect the health and safety of its residents.**

¹¹ *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44.

¹² Colin D’Mello and Isaac Callan, “Hospitalizations and death: Ontario’s internal warnings over supervised consumption site ban,” *Global News*, November 14, 2024.